

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

vs.

ROMAN ARAGON, *et al.*,

Defendants.

69cv07941-BB

RIO CHAMA STREAM SYSTEM

Section 3, Rio Nutrias

**MOTION TO ESTABLISH PROCEDURES FOR ENTRY OF
PARTIAL FINAL JUDGMENT AND DECREE ON SURFACE WATER
IRRIGATION RIGHTS IN THE RIO NUTRIAS SUBSECTION,
OF SECTION 3 OF THE RIO CHAMA STREAM SYSTEM**

COMES NOW the Plaintiff State of New Mexico, *ex rel.* State Engineer and moves the Court to enter an order establishing procedures that will govern the entry of a Partial Final Judgment and Decree on Surface Water Irrigation Rights in the Rio Nutrias Subsection of Section 3 of the Rio Chama Stream System (“Nutrias Subsection”). A proposed form of order adopting the procedures proposed herein is attached as Exhibit 1 to this Motion.

I. INTRODUCTION

This cause of action is a general adjudication of all water rights in the Rio Chama Stream System, a tributary of the Rio Grande. The adjudication of water rights and the hydrographic survey of the Rio Chama Stream System has been divided into 8 sections. The Court has previously entered a partial final judgment and decree in 5 sections. *See Partial Final Judgment and Decree* filed July 26, 1971 (Section 1) (Doc. 1778); *Partial Final Decree Rio El Rito Stream System* filed June 25, 1973

(Section 4) (Doc. 2394); *Partial Final Judgment and Decree on Surface Water Irrigation Rights in Section 5 of the Rio Chama Stream System* filed April 8, 2010 (Doc. 9669); *Partial Final Judgment and Decree Cañones & Polvadera Stream System* filed February 6, 1976 (Section 6) (Doc. 2862); *Final Decree* filed August 7, 1969 (Section 8) (originally filed in State Court on June 1, 1962) (Doc. 49). The Office of the State Engineer completed its hydrographic survey of surface water irrigation uses in the Rio Nutrias Subsection of Section 3 of the Rio Chama Stream System in 2000 and the State of New Mexico commenced the adjudication of water rights in this section immediately thereafter. *See Notice by State of New Mexico of Filing of Rio Chama Stream System Section 3, Rio Nutrias, Hydrographic Survey* filed May 30, 2000 (Doc. 5903).

The adjudication of the elements of water rights in individual subfiles in the Nutrias Subsection of surface water irrigation uses was completed by 2008, with the exception of the determination of priority dates and irrigation water requirements. On March 24, 2011, the Court entered its *Order Making Final Determination of Priority Dates and Irrigation Water Requirements in the Rio Nutrias Subsection of Section 3 of the Rio Chama Stream System* (Doc. No. 10011). The Court's determination of priority dates and irrigation water requirements in the Nutrias Subsection is binding on all claimants, known and unknown, who claim a right to use surface or underground water in the Nutrias Subsection. Claimants in the Nutrias Subsection have yet to be provided with an opportunity to file *inter se* objections to the remaining water rights elements in subfile orders previously entered in the Nutrias Subsection, such as the location and amount of irrigated acreage.

II. INTER SE PROCEEDINGS AND ENTRY OF PARTIAL FINAL JUDGMENT AND DECREE

The State of New Mexico ("State") proposes the following procedures that would require all

persons claiming water rights in the Nutrias Subsection to file *inter se* objections, if any, to the determination of water rights in individual subfile orders entered in the Nutrias Subsection, and that would lead to the entry of a Partial Final Judgment and Decree on Surface Water Irrigation Rights in the Rio Nutrias Subsection of Section 3 of the Rio Chama Stream System. The Decree will not affect or determine claims to groundwater or to stock watering uses in the Nutrias Subsection.

1. The State shall prepare a Proposed Partial Final Judgment and Decree on Surface Water Irrigation Rights in the Rio Nutrias Subsection of Section 3 of the Rio Chama Stream System (“Proposed Decree”) with an Addendum that summarizes the water rights adjudicated and decreed therein. The Proposed Decree, if approved by the Court after opportunity for *inter se* objections and hearings thereon, will represent the final adjudication of all claims for surface water irrigation rights in the Nutrias Subsection and bind all claimants of water rights of any type in the Nutrias Subsection – subject to the rights of parties who are not included within the Nutrias Subsection to object to the Decree, or to contest any individual water right described in the Decree, in any further *inter se* proceedings ordered by the Court for the Rio Chama or Rio Grande Stream Systems generally.

2. The State shall prepare a Notice of Proposed Partial Final Judgment and Decree on Surface Water Irrigation Rights in the Rio Nutrias Subsection of Section 3 of the Rio Chama Stream System (“Notice”) to be served on defendants in the Nutrias Subsection, including the United States and community ditches in the Nutrias Subsection. The Notice shall be mailed to the last known address of individual subfile defendants as they are listed in the Court’s records.¹ The State shall not

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Under the *Procedural Order for the Adjudication of Water Rights Claims in the Rio Nutrias, Rio Cebolla and Canjilon Creek Sections of the Rio Chama Stream System* filed July 25, 2000 (Doc. 5913), all claimants, whether or not they are represented by counsel, are responsible for informing
(continued...)

be required to make a determination of current ownership of tracts, nor mail notices to any person not a party to these proceedings. A successor-in-interest to an individual subfile defendant may request substitution of parties under Fed. R. Civ. P. 25(c) in order to participate in the proceedings. The State shall file an appropriate Certificate of Service with the Court following the mailing of the Notice to defendants in the Nutrias Subsection.

3. The State shall prepare a Notice for publication to inform all known and unknown claimants of water rights in the Nutrias Subsection of their right to participate and offer evidence in support of *inter se* objections to the Proposed Decree in the Nutrias Subsection, and that this *inter se* proceeding will be their only opportunity to file objections to the determination of surface water irrigation rights described in the Proposed Decree. The Notice for publication shall be published once each week for four consecutive weeks in the Rio Grande Sun, which is a newspaper of general circulation in the Nutrias Subsection and the Rio Chama Stream System generally. The State shall file an appropriate Proof of Publication with the Court following publication of the Notice.

4. Copies of the Proposed Decree and Addendum, and hydrographic survey maps showing the location of all tracts described in the decree, shall be made available for public inspection at the Office of the Rio Arriba County Clerk in Tierra Amarilla and in Española, at the Federal District Court in Santa Fe and in Albuquerque, and at the Utton Center at the UNM School of Law. Copies shall also be available for inspection at the Water Resource Allocation Program (WRAP) of the Office of the State Engineer in Santa Fe. The Proposed Decree (without the Addendum) shall be posted on the Office of the State Engineer's website.

¹(...continued)

the Court of any changes in their mailing address or changes in ownership of the water rights or real property associated with their rights. See Procedural Order filed July 25, 2000, Section III.

5. The Notice of Proposed Partial Final Judgment and Decree on Surface Water Rights and the Notice for publication shall inform claimants in the Nutrias Subsection that all *inter se* objections to the Proposed Decree must be filed with the Court, in person or by mail for receipt no later than **December 15, 2011**. Claimants in the Nutrias Subsection, known and unknown, shall be notified that this will be their only opportunity to make *inter se* objections to the determination of surface water irrigation rights described in the Proposed Decree. Blank forms that may be used for filing *inter se* objections shall be available to the public with the Proposed Decree at the locations described in paragraph 4 above. The form shall also be included with the Notice of Proposed Final Judgment and Decree to be mailed to defendants in the Nutrias Subsection.

6. If *inter se* objections are timely filed, the State shall prepare a report that summarizes all objections and make the report available for public inspection at the locations described in paragraph 4 above by **February 1, 2012**. The State shall mail a copy of the *inter se* objections to those persons whose water rights are the subject of those objections, by certified mail, return receipt requested, and file an appropriate Certificate of Service with the Court. Persons who file timely *inter se* objections, and the affected subfile parties/defendants, shall be required to attend a scheduling and pretrial conference with the Court in Santa Fe. Further procedures for hearing objections to the Proposed Decree shall be determined at the conference.

7. Whether or not they have filed an objection, all persons having water rights in the Nutrias Subsection may participate in the proceedings to resolve *inter se* objections. **All persons having water rights in the Nutrias Subsection will be bound by the outcome of the proceedings to resolve *inter se* objections.** Persons that elect to participate in the proceedings to resolve *inter se* objections shall file a notice of intent to participate with the Court no later than **March 15, 2012**.

Blank forms that may be used for this purpose shall be available to the public with the report that summarizes *inter se* objections. Persons that elect to participate in the proceedings to resolve *inter se* objections shall also be required to attend the scheduling and pretrial conference with the Court in Santa Fe.

8. The State has prepared draft copies of the Proposed Decree (without the Addendum or associated hydrographic survey maps), a proposed Notice to be served on defendants in the Nutrias Subsection, a proposed Notice for publication, a proposed *Inter Se* Objection Form, and a proposed Notice of Intent to Participate in *Inter Se* Proceedings, which are attached hereto as Exhibits 2, 3, 4, 5 and 6.

WHEREFORE the Plaintiff State of New Mexico requests that the Court enter its Order granting this Motion and adopting the procedures set forth herein for the purpose of entry of a Partial Final Judgment and Decree on Surface Water Irrigation Rights in the Rio Nutrias Subsection of Section 3 of the Rio Chama Stream System.

DATED June 27, 2011.

Respectfully submitted,

/s/ Ed Newville

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of June 2011, I filed the foregoing Motion electronically through the CM/ECF system which caused the parties on the electronic service list, as more fully set forth in the Notice of Electronic Filing, to be served via electronic mail.

/s/ Ed Newville
Edward G. Newville